IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

CP (IBC)/46/KOB/2022

(Under Section 7 of IBC, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Union Bank of India Vs Green Gateway Leisure Limited;

MEMO OF PARTIES:

UNION BANK OF INDIA, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai – 400 021. And also at UNION BANK OF INDIA, TC 38/438-2, Gouri Plaza, Near Chenthitta Junction, Chalai P.O, Thiruvananthapuram – 695 036;

… Applicant/Financial Creditor

-Versus-

GREEN GATEWAY LEISURE LIMITED, 1st Floor, New Corporation Building, Palayam, Thiruvananthapuram – 695 033.

… Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For Applicant/Financial Creditor	:	Mr. Sadchith P Kurup Advocate
For Corporate Debtor	:	Dr. K S Ravichandran, PCS

Order reserved on: 23.11.2022
Order pronounced on:25.01.2023

ORDER

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **Green Gateway Leisure Ltd**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a Public Limited Company with Corporate Identification Number U99999MH1919PTC000615. As per Part II of the application, the Corporate Debtor is a Public Limited Company with Corporate Identification Number U55101KL2004PLC017474 and with registered office at s 1st Floor, New Corporation Building; Palayam P O, Thiruvananthapuram, Kerala, 695033. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. CA Rajmohan R Number: IBBI/IPA-001/IP-P-02331/2020-2021/13517 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs. 39,78,12,079/- as on 02.08.2022. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

    a) Sanction letter dated 12.06.2010 approving loan of Rs.25 Crore and modification letter dated 04.01.2014

    b) Demand Promissory Note dated 02.07.2010, 29.09.2012, 24.02.2014, 12.01.2015 and 01.07.2016 executed by Corporate Debtor

    c) Term Loan Agreement dated 02.07.2010, 29.09.2012, 24.02.2014, 12.01.2015 executed by Corporate Debtor

d) Term Loan Agreement for Hypothecation of Movables dated 02.07.2010 and 29.09.2012, executed by Corporate Debtor

e) Letter of Guarantee dated executed by M/s. Air Travel Enterprises India Ltd and Personal Guarantors in favour of Financial Creditor dated 02.07.2010, 29.09.2012, 24.02.2014, 12.01.2015

f) Debit Balance Confirmation Letter dated 29.09.2012, 31.03.2013 and 31.12.2013

g) Order in IBA/01/KOB/2020 dated 15/10/2020 of NCLT, Kochi admitting section 7 application against same Corporate Debtor

h) Statement of Account of Term Loan Account No. 395806390240075 for period from 30.07.2010 to 02.08.2022

i) Copy of One Time Settlement Proposal dated 19.03.2022 signed by Corporate Debtor and reply of Financial Creditor dated 21.03.2022

j) Order passed by NCLAT, Principal Bench, Delhi in Company Appeal (AT)(INSOLVENCY)No. 993 of 2020 dated 09.09.2021

4. Brief fact of the case are:

i. The present application is filed by Union Bank of India, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor Ms. Green Gateway Leisure Ltd.

ii. The Financial Creditor has granted a Term Loan of Rs. 25 Crores to the Corporate Debtor by way of sanction letter dated 12.6.2010 and modified sanction letter dated 05.01.2014, and loan agreements dated 02.07.2010 which was renewed/restructured/modified on 29.9.2012, 24.2.2014 and 12.1.2015.

iii. The term loan was granted for setting up a Five Star Deluxe Resort at Bekal. The corporate debtor has accepted the terms of the sanction letter and executed various documents in favour of the Financial Creditor.

iv. The Corporate Debtor had executed Demand Promissory Note dated 02.07.2010, 29.9.2012, 24.2.2014, 12.1.2015 and 1.7.2016 and Guarantee Agreements dated 02.07.2010, 29.9.2012, 24.2.2014, 12.1.2015 along with the Term Loan Agreement, Agreement of Hypothecation of Movables, to realize the term loan amount with interest and costs/and all other receivable charges or including proceedings against the mortgaged property and hypothecated assets, for Rs. 25 Crores in favour of the Financial Creditor. The debt was secured through equitable mortgage upon which paripassu first charge is available to the Financial Creditor and a written communication of deposit of Title Deed dated 20.12.2011 in favour of Financial Creditor was made. M/s. Air Travel Enterprises India Ltd. represented by its chairman had executed Corporate Guarantee along with other directors had given personal guarantee also for the outstanding debt.

v. After availing the loan facility there was no proper repayment in spite of repeated requests made by the Financial Creditor. The account was classified as NPA on 30.9.2015 and the Corporate Debtor was called upon to repay the debt. A demand notice dated 29.12.2017 under section 13(2) of SARFAESI was issued to the Corporate Debtor and Guarantors. A reply to same dated 27.02.2018 was given but they failed to repay the amount. Then the Financial Creditor approached this Tribunal and this Tribunal vide order dated 15.10.2020 in IBA /01/KOB/2020 admitted the section 7 application. Thereafter the matter was taken up in appeal in Company Appeal (AT)(INSOLVENCY)No. 993 of 2020 and by the judgment dated 9.9.2021, the NCLAT had set aside the admission of the Section 7 application and directed the corporate debtor to settle the account within 6 months from the date of the appellate order. The operative portion of the order is produced below:

> ***"20. Be that as it may, for all the aforenoted reasons and having regard to the Written Submissions that efforts would be made to settle the matter, in the interest of justice and taking into consideration the fact that in this pandemic, the travel dependent sector, which is the core business of the 'Corporate Debtor', has more than suffered the negative impact of the crisis, this opportunity is being given to settle which could help mitigate the blow. We are also conscious of the fact that the 'Corporate Debtor* has settled the matter with Dhanlaxmi Bank, the Applicant of Section 7 Application in IA/06/KOB/2020 & IBA/41/KOB/2019 which was disposed of as withdrawn based on the settlement terms on 06.01.2020, during which period of pendency, this Section 7 Application was filed on 27.12.2019 against the same 'Corporate Debtor'. We reiterate, that the scope and objective of the Code is Insolvency & not recovery. The Admission of Section 7 Application is set aside. Keeping in view the peculiar facts of the attendant case, we dispose of this Appeal with a direction that if the 'Corporate Debtor' fails to settle in 6 months' time from the date of this Order, the Respondent Bank is at liberty to take appropriate steps. Any observations made in this Appeal shall not stand in the way of any further proceedings, if initiated. Needless to add, the period spent in pursuing this Appeal shall be excluded for the purpose of limitation."***

vi. The amount as directed by the appellate tribunal remain unpaid by the corporate debtor in spite of a further OTS Proposal being made by the CD which was not found to be viable by the Financial Creditor. Since the Corporate Debtor is unable to pay its debt, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

5. On the respondent side, it is submitted that the application is time barred for the loan was considered as NPA as early as on 30.09.2015. It is contended that the granting of 6 months by the NCLAT to settle debt cannot make the limitation run from end of the same grace period. It is stated that the CD was a

special purpose vehicle formed for establishing a resort of high standards wherein Air Travel Enterprises another company who is established in tourism is one of the promoters. It is stated that the project was envisaged to provide premium experience to customers in line with international WESTIN brand standards. It is further stated that a total over Rs. 185 crores have been made for the project and it was due to the subsequent non-payment of funds by the joint lenders to the project that it could not get executed in time. A report of Dun & Bradstreet for technical project assessment was relied to show that the promoters made huge efforts financially to bring in equity funding and its viability. The applicant as well as the other creditors were allegedly pointed as the cause of this default by the CD which cost major project overrun due to litigations and delay in funding requirements. It is stated that out of 3 joint lenders, 2 has been settled by the CD and that there is sufficient security for the loans and that the net worth of the CD is positive. It is also stated that the entire tourism sector was down in covid period and at present there is hope for revival in the sector and submitted that the project may be seen in a business and commercial sense. It was also stated that a further rescheduling and an OTS in better terms to the CD may resolve the debt. The respondent further relied on of the decision of NCLAT in Park Energy Vs Syndicate Bank to state that the lenders can be instrumental in inducing default by marking account as NPA and on that ground the application may be rejected. The case of Vidarbha was also invoked to propose this Tribunal to look at options out of insolvency to settle this debt.

6. The defence plea of limitation taken by the Respondent is unsustainable; because the limitation point was discussed in depth by NCLAT in the A. No. 993 of 2020 after referring catena of citations them it is finally concluded as follows: "Hence we hold that the Section 7 application was not barred by Limitation as the facts substantiate that the period of limitation of three years as provided under Article 137 of the Limitation Act, 1963 is satisfied". Now raising the same point is barred on the principle of "resjudicates". Thus, the

limitation issue was already reached finality. The NCLAT set aside only the admission order of Section 7 of IBC Petition, enabling the respondent to settle the amount, but respondent reagitated the limitation point, the same is turned down.

7. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby the applicant herein is a Financial Creditor. Thus, going by the records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

8. So, in light of the case's facts, circumstances, and legal situation, we believe that this application, as submitted by the Applicant—Financial Creditor, must be admitted under Section 7(5) of the IBC, 2016.
9. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

    a) The petition bearing CP (IB) No. 46/ KOB /2022, Union Bank of India, the financial creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP against **Green Gateway Leisure Ltd**, (CIN: U55101KL2004PLC017474), the corporate debtor is admitted.

b) There will be a moratorium under section 14 of the Code.

c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

e) The Financial Creditor has proposed the name of one Mr. CA Rajmohan R, IBBI No: IBBI/IPA-001/IP-P-02331/2020-2021/13517, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.

f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

i) In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.

j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

10. CP (IB) No.46/ KOB /2022 to come up on 01.03.2023 for progress report.

11. In view of order passed in Main C.P No. 46/KOB/2022, IA. No. 388/KOB/2022 and all other Interlocutory Application If stands dismissed.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2023.01.25 12:34:43 +05'30'

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2023.01.25 12:59:19 +05'30'

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this 25th day of January, 2023.

Supriya. P_S.